

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

NICHOLAS A. MAY,

Petitioner,

-v-

9:22-CV-731

JOSEPH E. COREY, Superintendent
of Auburn Correctional Facility,

Respondent.

APPEARANCES:

NICHOLAS A. MAY
Petitioner, Pro Se
19-B-0135
Auburn Correctional Facility
P.O. Box 618
Auburn, NY 13021

OF COUNSEL:

HON. LETITIA JAMES
New York State Attorney General
Attorneys for Respondent
28 Liberty Street
New York, NY 10005

JAMES FOSTER GIBBONS, ESQ.
Ass't Attorney General

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On July 11, 2022, *pro se* petitioner Nicholas May (“petitioner”), an inmate held in state custody, filed this action seeking federal habeas relief pursuant to 28 U.S.C. § 2254. Dkt. No. 1. Respondent was initially directed to answer the petition, Dkt. No. 2, but later sought and received permission to file a motion to dismiss the petition as untimely, Dkt. Nos. 10, 11, 12. Although petitioner was given an opportunity to respond to that motion, Dkt. No. 13, and received four extensions of time in which to do so, Dkt. Nos. 15, 17, 19, 21, to date petitioner has not filed any response to the pending motion.

On August 14, 2023, U.S. Magistrate Judge Miroslav Lovric advised by Report & Recommendation (“R&R”) that respondent’s motion to dismiss the petition be granted. Dkt. No. 24. As Judge Lovric explained, petitioner had failed to file his petition within the one-year statute of limitations. *Id.* Judge Lovric also concluded that none of the exceptions to this deadline—statutory tolling, equitable tolling, or even the equitable exception for claims of actual innocence—applied to petitioner’s claims. *Id.*

Petitioner has not filed objections, and the time period in which to do so has expired. *See* Dkt. No. 24. Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 24) is ADOPTED;
2. Respondent's motion to dismiss (Dkt. No. 12) is GRANTED;
3. The petition is DENIED and DISMISSED;
4. No Certificate of Appealability shall issue because petitioner has failed to make a "substantial showing of the denial of a constitutional right" as required by 28 U.S.C. § 2253(c)(2); and
5. Any further request for a Certificate of Appealability must be addressed to the U.S. Court of Appeals in accordance with Rule 22(b) of the Federal Rules of Appellate Procedure.

The Clerk of the Court is directed to terminate the pending motions, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: August 30, 2023
Utica, New York.



David N. Hurd
U.S. District Judge